

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2006-0563, Jennifer Turgeon v. Richard Cheng-Ta Dai, M.D. & a., the court on June 5, 2007, issued the following order:**

The plaintiff, Jennifer Turgeon, appeals an order of the superior court granting summary judgment on her claims of medical negligence on the basis that no reasonable juror could find, upon the testimony of the plaintiff's medical expert, that the alleged negligence of defendant Richard Cheng-Ta Dai, M.D. (Dr. Dai), proximately caused her injuries. Finding no error, we affirm.

In reviewing the trial court's grant of summary judgment, we consider the evidence submitted in connection with the motion, and all reasonable inferences drawn from such evidence, in the light most favorable to the nonmoving party, and review the trial court's application of the law to the facts de novo. See Shaff v. Leyland, 154 N.H. 495, 497 (2006). Summary judgment is required where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See id.; RSA 491:8-a, III (1997).

In an action for medical negligence, the plaintiff must establish, through expert proof, that "as a proximate result [of the medical provider's negligence], the [plaintiff] suffered injuries which would not otherwise have occurred." RSA 507-E:2, I(c) (Supp. 2006); see also Emerson v. Bentwood, 146 N.H. 251, 256 (2001). The expert's testimony must be sufficient for a reasonable juror to find that, but for the negligence, the plaintiff would probably not have suffered her injuries. See Bronson v. The Hitchcock Clinic, 140 N.H. 798, 802-03 (1996).

In this case, the plaintiff claimed that as a result of Dr. Dai's failure to timely diagnose and treat her medical condition, she required certain surgery. To support this claim, she submitted an expert disclosure opining that "[h]ad [a specific diagnostic] procedure been performed immediately, the patient would have had necessary treatment instituted and the disease process would have been addressed at a significantly earlier date." At his deposition, the expert testified that while it is possible the plaintiff would have avoided surgery had her condition been earlier diagnosed and treated, he could not say that she probably would have avoided the surgery, or that the ultimate result of the medical condition probably would have been better. He further clarified that he understood the term "probably" to mean "more likely than not."

He also testified, however, that "as with other diseases, . . . the earlier generally that diagnosis is made and treatment begun, the better the result."

Similarly, upon redirect the expert responded to a question regarding whether an earlier diagnosis more likely than not would have affected the plaintiff's treatment by testifying that "the administration of proper medication of treatment . . . would have been better for this patient in terms of her outcome."

Drawing all inferences from this testimony in the plaintiff's favor, we conclude that no reasonable juror could find that, absent Dr. Dai's untimely diagnosis and treatment of the plaintiff's medical condition, she probably would not have suffered the specific injuries for which she seeks compensation. While the plaintiff is correct that she need only demonstrate with reasonable probability that she would not have suffered her injuries in the absence of the defendant's negligence, her expert unequivocally testified that he could not say she probably would have avoided the surgery or attained a better result had her medical condition been earlier diagnosed and treated. Under these circumstances, the expert's assertion that an earlier diagnosis "would have been better" is not sufficient to carry the plaintiff's burden of proof on causation.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**